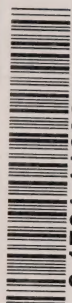


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Report



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~~RESTRICTIVE TRADE PRACTICES COMMISSION~~

REPORT

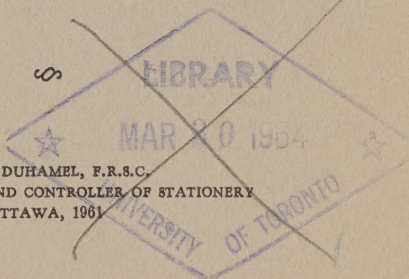
Concerning the Distribution and Sale of Gasoline in
the Toronto Area (Alleged Price Discrimination -
Texaco Canada Limited)

∞

DEPARTMENT OF JUSTICE
OTTAWA

∞

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961



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RESTRICTIVE TRADE PRACTICES COMMISSION

R E P O R T

CONCERNING THE DISTRIBUTION AND SALE OF GASOLINE
IN THE TORONTO AREA (ALLEGED PRICE DISCRIMINATION
- TEXACO CANADA LIMITED)

COMBINES INVESTIGATION ACT

Ottawa
1961

ROGER DUHAMEL, F.R.S.C.
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RESTRICTIVE TRADE PRACTICES COMMISSION

Room 451, Justice Building,
April 28, 1961

Honourable E. Davie Fulton, P.C., Q.C., M.P.,
Minister of Justice,
Ottawa.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with instances of alleged price discrimination in the sale of gasoline in the Toronto area by Texaco Canada Limited.

The matter was brought before the Commission by the submission of a statement of the evidence obtained in the inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of sections 18 and 19 of the Act.

Evidence and argument in regard to the Statement of Evidence were heard in proceedings before the Commission in Toronto on March 8, 1961. In these proceedings Messrs. J.J. Quinlan and A.C. Whealy appeared on behalf of the Director of Investigation and Research, and Messrs. J.J. Robinette, Q.C., D.F. Bentley and R.D. Hepburn appeared on behalf of Texaco Canada Limited.

Yours faithfully,

(Sgd.) C. Rhodes Smith

C. Rhodes Smith
Chairman

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CHAPTER I

INTRODUCTION

1. Reference to the Commission

This inquiry, which was conducted by the Director of Investigation and Research*, was brought before the Restrictive Trade Practices Commission** by the submission of a statement of the evidence obtained in the inquiry pursuant to section 18 of the Combines Investigation Act***. A copy of such statement, dated December 1st, 1960, was also sent by the Director to Texaco Canada Limited against whom allegations were made therein.

2. Conduct of the Investigation by the Director

As a result of a complaint received from the Ontario Retail Gasoline and Automotive Service Association, the investigation was begun on the initiative of the Director under section 8(b) of the Combines Investigation Act****

* Hereinafter called the Director.

** Hereinafter called the Commission.

*** Hereinafter called the Act.

**** Prior to its 1960 amendment, section 8 read as follows:

"8. The Director shall

- (a) on application made under section 7,
- (b) whenever he has reason to believe that section 32 or 34 of this Act or section 411 or 412 of the Criminal Code has been, is being or is about to be violated, or
- (c) whenever he is directed by the Minister to inquire whether any of the sections mentioned in paragraph (b) has been, is being or is about to be violated,

cause an inquiry to be made into all such matters as he considers necessary to inquire into with the view of determining the facts. 1952, c.39, s.2."

During the course of the inquiry, the Director asked for and obtained a return of information by way of answers to a questionnaire which he sent to Texaco Canada Limited under section 9 of the Act.

The Director also applied to a member of the Commission for permission to examine witnesses under oath as provided in section 17 of the Act. Orders to this effect were issued and sworn oral evidence was taken in Toronto from two gasoline retail operators: Messrs. Lloyd Edwin Edmunds and Jack Mills. Whenever reference is made in this report to the transcript of the evidence taken during these examinations, it will be made as follows: (Evidence, p. . . .).

During the course of these examinations, the following exhibits were filed:

- Exhibit T-1 - Invoices for month of July from Texaco Canada Limited to Lloyd Edwin Edmunds, dated July 1, 3, 10, 14, 17, 21, 24, 28, 31, 1959, respectively.
- Exhibit T-2 - Ten pages, a summary of purchases of gasoline by Wilky's Sales and Service Ltd. from Texaco Canada Limited from April 17 to July 31, 1959, inclusive.
- Exhibit T-3 - Twenty-four invoices, covering July 1 to July 31, 1959, purchases of gasoline by Wilky's Sales and Service Ltd. from Texaco Canada Limited.

3. Hearing Before the Commission

On receipt of the Statement of Evidence, the Commission, in accordance with the provisions of section 18 of the Act, by an Order dated January 6, 1961, fixed Wednesday, the 8th day of March, 1961, at the hour of 10 o'clock in the forenoon, in the Board Room, Department of Labour, 9th Floor, MacKenzie Building, 36 Adelaide Street East, in the City of Toronto, in the Province of Ontario, as the date, time and place at which argument could be submitted by or on behalf of the Director in support of the Statement of Evidence and at which persons against whom any allegation is made therein would be allowed full opportunity to be heard in person or by counsel.

At the hearing held on March 8, 1961 the following appearances were entered:

Mr. J.J. Quinlan	- for Director of Investigation
Mr. A.C. Whealy	and Research
Mr. J.J. Robinette, Q.C.	- for Texaco Canada Limited.
Mr. D.F. Bentley	
Mr. R.D. Hepburn	

In the course of the hearing exhibits numbered H-1 to H-4 were received and one witness was examined: Mr. William Lawrence Enman, an employee of Texaco Canada Limited, who described himself as having been a "representative of merchandising" in the year 1959. Whenever reference is made in this report to the transcript of the hearing, it will be done as follows: (Hearing, p. . . .).

4. Allegations Made in the Statement of Evidence

The concluding section of the Director's Statement contains the following summary and allegations:

"37. The evidence obtained in this inquiry discloses that the retail outlets operated by Wilkie's^{*} and Mr. Edmunds were situated approximately one and one-quarter miles apart in the City of Toronto. Also, the evidence set out in Chapter IV shows that these two outlets were in competition with each other in the retail sale of Texaco brand gasoline.

38. The evidence also discloses that Texaco granted a 2.5 cents per gallon allowance off the tank wagon price on both grades of gasoline to Wilkie's quite apart from any influence of the 'price war'. Because Wilkie's is an independently owned and operated gasoline retail outlet and is, therefore, free to choose what brand it will sell, various gasoline suppliers compete to obtain this outlet for their branded products. In order to obtain or hold this location as an outlet for its brand of gasoline, Texaco agreed to allow

* In the transcript of evidence in the inquiry and in the Statement of Evidence the name is given as "Wilkie's" but the correct spelling would appear to be "Wilky's".

Wilkie's 2.5 cents per gallon rebate off the tank wagon price for both grades of branded gasoline subject to Wilkie's purchasing the quantities specified in the agreement as described in paragraph 7. While the evidence does not indicate that such an arrangement was available to Mr. Edmunds, it is unlikely that he could have qualified for a similar rebate in any event.

39. The evidence also discloses that from time to time during the existence of the retail gasoline 'price war' in the metropolitan Toronto area in 1959, it has been the policy of Texaco to offer temporary allowances off its basic tank wagon price to retail dealers to assist them to meet the prices of competing retail gasoline dealers. Temporary allowances were granted at the sole discretion of Texaco and were based upon the assessment by Texaco of the individual needs of each dealer. In the period April 17 - July 25, 1959, these allowances were granted on regular gasoline from time to time throughout the period and on premium gasoline from the end of June on. In periods other than 'price war' periods, temporary allowances either were withdrawn or substantially reduced.

40. Texaco did not offer or give Mr. Edmunds temporary allowances of any kind during those periods in April, May and June of 1959 when the 'price war' was continuing in the metropolitan Toronto area, but such temporary allowances on regular gasoline were being granted to Wilkie's. While Mr. Edmunds did not specifically ask for the temporary allowance, he was not told of its availability or the terms upon which it might be granted, nor did he receive such allowance until the delivery of July 3, 1959.

41. Mr. Edmund's [sic] evidence shows that he lost customers, inter alia, to Wilkie's during the period from April 17 to July 2, 1959, when the retail price of regular gasoline was being reduced due to the 'price war' and when temporary allowances were being granted to outlets such as Wilkie's but not to him.

42. It is alleged that Texaco Canada Limited between April 17 and May 4, 1959, both inclusive, and between June 6 and July 2, 1959, both inclusive, was a party to the sale of regular gasoline that discriminated, to its knowledge, against a competitor of the purchaser, namely, Lloyd Edwin Edmunds, in that a discount, rebate, allowance, price

concession or other advantage, was granted to Wilkie's Sales and Service Limited over and above any such discount, rebate, allowance, price concession or other advantage, available at the time of such sale to Lloyd Edwin Edmunds, in respect of the sale of gasoline of like quality and quantity within the meaning of section 412 of the Criminal Code.*

* Section 412 of the Criminal Code (which was incorporated in the Combines Investigation Act in 1960 as section 33A) read as follows:

"412.(1) Every one engaged in trade, commerce or industry who

- (a) is a party to or privy to, or assists in, any sale that discriminates to his knowledge, directly or indirectly, against competitors of the purchaser, in that any discount, rebate, allowance, price concession or other advantage, is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage, available at the time of such sale to such competitors in respect of a sale of goods of like quality and quantity;
- (b) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, having or designed to have the effect of substantially lessening competition or eliminating a competitor in such part of Canada; or
- (c) engages in a policy of selling goods at prices unreasonably low, having or designed to have the effect of substantially lessening competition or eliminating a competitor,

is guilty of an indictable offence and is liable to imprisonment for two years.

(2) It is not an offence under paragraph (a) of subsection (1) to be a party or privy to, or assist in any sale mentioned therein unless the discount, rebate, allowance, price concession or other advantage was granted as part of a practice of discriminating as described in that paragraph.

(3) The provisions of paragraph (a) of subsection (1) shall not prevent a co-operative society returning to producers or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society."

43. It is further alleged that the discount, rebate, allowance, price concession or other advantage referred to in paragraph 41 was granted as part of a practice of discriminating within the meaning of section 412(2) of the Criminal Code."

5. Position Taken by Texaco Canada Limited with
Respect to the Allegations

The position taken by Texaco Canada Limited with respect to the allegations in the Statement of Evidence as indicated in the representations made by counsel for the Company at the hearing before the Commission may be summarized as follows:

1. The temporary allowance granted by Texaco Canada Limited to Wilky's Sales and Service Ltd. was given to the latter to enable the dealer to compete with dealers of other oil companies in the immediate Dufferin Street area. The allowance was given by Texaco Canada Limited in answer to requests by Wilky's Sales and Service Ltd. to be put in a position to meet the competition of other gasoline outlets in the Dufferin Street area.

2. The evidence in the inquiry does not show that the temporary allowance was not available to Mr. Edmunds. Evidence given by Mr. Edmunds makes it apparent that he was not really interested in obtaining the temporary allowance prior to the time he received it. Mr. Edmunds was familiar with the temporary allowance system because he had received temporary allowances from Texaco Canada Limited in 1958, and on a fair reading of the evidence it is apparent that he did not want such allowances in 1959 until he obtained them.

3. The allegations in the Statement of Evidence relate to the price relationship between only two of the 240 dealers of Texaco Canada Limited in the metropolitan Toronto area and involve short periods of time under very special and unusual circumstances. It was submitted that the manner in which the two dealers were dealt with in regard to temporary allowance could not constitute a practice of discriminating in price on the part of Texaco Canada Limited. The granting of a temporary allowance to Wilky's Sales and Service Ltd. was not done to injure Mr. Edmunds's business or to lessen competition but for the purpose of assisting Wilky's Sales and Service Ltd. to meet competition in the immediate area.

4. In view of the locations of the service stations of Mr. Edmunds and Wilky's Sales and Service Ltd. on different traffic arteries and a mile and one quarter apart it cannot be said that they were truly competitors in the usual sense. It is true that there might be some people who would go to one place or the other but the evidence suggests that the two stations served different classes of trade. The business of Wilky's Sales and Service Ltd. consisted more of commercial trade, while a considerable part of Mr. Edmunds's business was made up of drivers of larger automobiles using premium gasoline. According to the evidence, there was another Texaco station about one mile north of Mr. Edmunds's station on Bathurst Street. This station would be more truly a competitor of Mr. Edmunds but the Statement of Evidence does not indicate any price concession to the nearer station as affecting Mr. Edmunds.

5. It was submitted that the allegations made in the Statement of Evidence are not supported by the evidence in the inquiry.

CHAPTER II

BUSINESS RELATIONSHIP BETWEEN TEXACO CANADA LIMITED AND MR. L. E. EDMUNDS AND WILKY'S SALES AND SERVICE LTD.

1. Texaco Canada Limited

Texaco Canada Limited* is a distributor of automotive petroleum products. Incorporated under the laws of Canada on December 21, 1927, the Company has its head office at 246 Bloor Street West, in the City of Toronto, in the Province of Ontario.

Mr. L.E. Edmunds and Wilky's Sales and Service Ltd. operate retail gasoline outlets in Toronto which are supplied with petroleum products by Texaco.

2. Mr. L.E. Edmunds

Mr. Lloyd Edwin Edmunds has been a lessee of Texaco since 1945 at 491 Glencairn Avenue, on the south-east corner of Bathurst Street, in the City of Toronto, where he has operated a service station business of which he is the sole proprietor. The monthly rental charged to Mr. Edmunds by Texaco for the service station during the period of the inquiry, was \$110 plus 1¢ per gallon on his purchases of gasoline from the company (Exhibit H-3).

During the period in 1959 to which the inquiry relates the service station leased by Mr. Edmunds from Texaco was apparently unchanged from the time he first leased it in 1945. In his evidence Mr. Enman described it as a "very old station" and said that about June 1960 it was rebuilt. Application had been made for a building permit prior to April, 1959 but permission to rebuild was not granted until 1960 (Hearing, p. 6, p. 13). Mr. Enman said that the business done by the Edmunds service station was drawn mainly from the neighbouring residential area

* Hereinafter referred to as Texaco.

in which there are many two-car families and a considerable number of large automobiles. Sales of premium gasoline by Mr. Edmunds, according to the evidence of Mr. Enman, formed about 40 per cent of his total, which is a considerably higher percentage than that of other service stations (Hearing, p. 7).

3. Wilky's Sales and Service Ltd.

Wilky's Sales and Service Ltd.* is an incorporated company controlled by its President, Mr. Jack Mills. Located at 2835 Dufferin Street at the north-east corner of the intersection of Hillmount Road, in the City of Toronto, this firm is engaged in the business of selling tires, gasoline, oil and other products pertaining to the servicing of automobiles. Wilky's is classed in the trade as an independent gasoline outlet as it owns the premises on which it operates (Evidence, p. 17; Hearing, p.24).

Texaco and Wilky's entered into a contract, effective March, 1956 under which Wilky's became a retail outlet for the sale of Texaco products including gasoline for a period of ten years from that date. By this contract, Wilky's was granted an allowance of 2.5¢ per gallon on its purchases of gasoline from Texaco in each year, provided a minimum of 720,000 gallons were purchased in that year. According to the return of information from the Vice-President of Texaco, this allowance was granted "For the purpose of holding or acquiring this particular account having regard to a competitive situation or condition in keeping with normal competitive practice." There is no evidence in the inquiry, however, of competitive offers from other oil companies.

According to the evidence of Mr. Mills, about two-thirds of the gasoline sales of Wilky's consist of purchases on charge accounts or credit cards. The charge accounts, which amount to about \$20,000 per month, consist of tradesmen and commercial firms and the business done in this way varies only slightly from month to month (Evidence, p. 25).

* Hereinafter referred to as Wilky's.

CHAPTER III

TEMPORARY ALLOWANCES GRANTED BY TEXACO

Under the agreement described in the preceding chapter, Texaco sold premium (Sky Chief) and regular (Fire Chief) gasoline to Wilky's at 2.5¢ per gallon less than the prevailing prices charged Mr. Edmunds. This situation was modified during the price war which took place in the retail gasoline trade between mid-April and late July, 1959 in the metropolitan Toronto area. In this period the difference between the prices charged the two stations was increased for a time by the granting of temporary allowances by Texaco to Wilky's at a much earlier date than to Mr. Edmunds.

The manner in which temporary allowances to retail dealers were made by Texaco, the terms on which they were granted and the reason for such allowances were described as follows in the return of information from the Vice-President of Texaco:

"Manner - From April 17, 1959 to June 30, 1959 said allowances were made by means of credit notes applicable in the month following the month in which gasolines were delivered. After June 30, 1959 to July 25, 1959 allowances were made off face of invoice.

Terms - Temporary allowances off the tank wagon price, as per Exhibits Nos. 4 to 21 were made to those dealers involved in areas where there were intensive retail price disturbances while such disturbances lasted, the allowances being designed to afford dealers affected a gross margin of \$0.05 per gallon on both grades of gasoline for period from April 17, 1959 to July 20, 1959, and a gross margin of \$0.065 per gallon on Fire Chief and \$0.07 per gallon on Sky Chief for period from July 21, 1959 to July 25, 1959.

Reason - The allowances appearing on Exhibits Nos. 4 to 21 inclusive were made at dealer's request to enable him to meet existing competitive retail prices in the immediate vicinity of dealer's outlet where such competition already existed.

When a dealer finds himself faced with the competition of lower retail prices, he not infrequently turns to us for advice, and, in many instances, for assistance. In such cases, we have consulted with him, investigated the circumstances of his individual problem, and, entirely on our own initiative, given him such assistance to meet such competition."

(Texaco Return of Information -
Exhibit No. 1, page 2)

Between April 17 and July 25, 1959 the following temporary allowances were granted by Texaco to Wilky's and Mr. Edmunds on premium and regular grades of gasoline. The amounts shown as allowances to Wilky's do not include the discount of 2.5¢ per gallon allowed under the contract previously mentioned.

Table 1

Temporary Allowances to Wilky's and Mr. Edmunds

Date	Wilky's		Mr. Edmunds	
	Premium Gasoline (cents per gallon)	Regular Gasoline	Premium Gasoline (cents per gallon)	Regular Gasoline
April 17	0	3.4	0	0
April 18-20	0	7.4	0	0
April 21 - May 4	0	10.4	0	0
May 5 - June 5	0	0	0	0
June 6-17	0	0.4	0	0
June 18-29	0	4.4	0	0
June 30 - July 3	7.4	7.4	0	0
July 3-20	7.4	7.4	7.4	7.4
July 21	7.4	7.4	7.4	7.4
July 22-25	2.4	1.9	2.4	1.9

Sources: Exhibit H-1; Texaco Return of Information.

The quantities of premium and regular gasoline delivered to Wilky's and Mr. Edmunds by Texaco in the period covered by Table 1 are shown in Table 2.

Table 2

Quantities of Gasoline Delivered to Wilky's
and Mr. Edmunds, April 17 to July 25, 1959

Date	Mr. Edmunds			Wilky's		
	Premium (gallons)	Regular	Premium as % of Total	Premium (gallons)	Regular	Premium as % of Total
April 17-30	3,400	4,015	45.8	4,330	102,675	4.0
May 1-31	7,790	10,830	41.8	11,950	152,425	7.3
June 1-30	7,360	10,620	40.9	11,430	78,130	12.8
July 1-25	<u>5,770</u>	<u>6,810</u>	45.9	<u>8,150</u>	<u>37,045</u>	18.0
Total	24,320	32,275	43.0	35,860	370,275	8.8
Number of individual deliveries	28	29		50	125	
Average quantity per individual delivery	868.6	1,112.9		717.2	2,962.2	

Sources: Exhibit H-1; Texaco Return of Information

From April 17 to July 25, Wilky's total purchases of premium gasoline were about 50 per cent greater than those of Mr. Edmunds and the number of deliveries about 75 per cent greater, so that the average size of individual deliveries was somewhat smaller in the case of Wilky's. During the same period, Wilky's purchases of regular gasoline were nearly twelve times as great as those of Mr. Edmunds, and individual deliveries to Wilky's were on the average for quantities almost three times as great as in the case of Mr. Edmunds.

CHAPTER IV

RETAIL PRICES OF GASOLINE AT WILKY'S AND MR. EDMUNDS'S SERVICE STATIONS

1. Before the Price War

In his evidence, Mr. Edmunds stated that, prior to July, 1959, his selling prices of premium and regular gasoline were 47.9¢ and 43.9¢ per gallon respectively (Evidence, p. 4). Tank wagon prices of Texaco at the time were 40.3¢ and 35.3¢ per gallon for premium and regular grades respectively, so that Mr. Edmunds had gross margins of 7.6¢ and 8.6¢ for the respective grades. In the case of Wilky's, Mr. Mills stated that, prior to April, 1959, selling prices of premium and regular gasoline were respectively 48.9¢ and 43.9¢ per gallon (Evidence, p. 20). With the tank wagon prices mentioned above less the 2.5¢ discount, the gross margins of Wilky's were 11.1¢ on both grades. The relative figures are shown in Table 3.

Table 3

Retail Prices of Gasoline before April 17, 1959*

Dealer and grades of gasoline	Tank wagon price	Discount	Net purchase price	Gross margin	Selling Price
- cents per gallon -					
Regular					
Mr. Edmunds	35.3	-	35.3	8.6	43.9
Wilky's	35.3	2.5	32.8	11.1	43.9
Premium					
Mr. Edmunds	40.3	-	40.3	7.6	47.9
Wilky's	40.3	2.5	37.8	11.1	48.9

* Texaco's Return of Information shows that Wilky's did not receive any temporary assistance before April 19, 1959.

Sources: Texaco Return of Information; Evidence, p. 4, 20.

As shown by the figures in Table 3, the price of regular gasoline was the same at both outlets, while the price of premium gasoline at Edmunds's service station was 1¢ per gallon lower than at Wilky's. It is apparent that the 2.5¢ per gallon discount received by Wilky's was included in the gross margins rather than applied to reduce selling prices.

2. During the Price War

It will be recalled from the extracts from Texaco's Return of Information, quoted earlier in this report, that the Company in granting temporary allowances during the price war in 1959 provided assistance which it considered would afford dealers a gross margin of 5¢ per gallon on premium and regular grades of gasoline in the period from April 17 to July 20 and gross margins of 6.5¢ per gallon on regular gasoline and 7¢ per gallon on premium gasoline in the period from July 21 to July 25.

In the case of Wilky's the gross margin was increased by the discount of 2.5¢ per gallon so that in the first period of the price war Wilky's gross margin was 7.5¢ on both grades of gasoline. Mr. Edmunds did not receive a temporary allowance on his purchases of gasoline until July 3. As his dispensing pumps were of an old type the alteration of pump prices required the services of a service man and the change was not made until July 11. Up to that date Mr. Edmunds continued to sell regular gasoline at 43.9¢ per gallon and premium gasoline at 47.9¢ per gallon. On July 11 Mr. Edmunds changed his prices to 35.9¢ for regular gasoline and 40.9¢ for premium gasoline (Evidence, pp. 5-6). On that date, prices at Wilky's were 32.9¢ for regular gasoline and 37.9¢ for premium. The changes in selling prices and in gross margins at the two stations during the price war are shown in Tables 4 and 5.

Table 4

Retail Prices of Regular Gasoline
during the Price War

Dealer	Tank wagon price	TA*	Discount	Net purchase price	Gross margin	Selling price
- cents per gallon -						
Wilky's						
April 17	35.3	3.4	2.5	29.4	7.5	36.9
April 18-April 20	35.3	7.4	2.5	25.4	7.5	32.9
April 21-May 4	35.3	10.4	2.5	22.4	7.5	29.9
May 5-June 5	35.3	-	2.5	32.8	11.1	43.9
June 6-June 17	35.3	0.4	2.5	32.4	7.5	39.9
June 18-June 29	35.3	4.4	2.5	28.4	7.5	35.9
June 30-July 20	35.3	7.4	2.5	25.4	7.5	32.9
July 21	35.3	7.4	2.5	25.4	9	34.4
July 22-July 25	35.3	1.9	2.5	30.9	9	39.9
Edmunds						
April 17-July 3	35.3	-	-	35.3	8.6	43.9
July 3-July 10	35.3	7.4	-	27.9	16	43.9
July 11-July 22	35.3	7.4	-	27.9	8	35.9
July 22-July 25	35.3	1.9	-	33.4	6.5	39.9

* Temporary allowance.

Sources: Texaco Return of Information; Exhibits T-1 and H-1;
Evidence, pp. 5-6, 8.

Table 5

Retail Prices of Premium Gasoline
during the Price War

Dealer	Tank wagon price	TA*	Discount	Net purchase price	Gross margin	Selling price
- cents per gallon-						
Wilky's						
April 17-June 30	40.3	-	2.5	37.8	11.1	48.9
July 1-July 20	40.3	7.4	2.5	30.4	7.5	37.9
July 21	40.3	7.4	2.5	30.4	9.5	39.9
July 22-July 25	40.3	2.4	2.5	35.4	9.5	44.9
Edmunds						
April 17-July 3	40.3	-	-	40.3	7.6	47.9
July 3-July 10	40.3	7.4	-	32.9	15	47.9
July 11-July 22	40.3	7.4	-	32.9	8	40.9
July 22-July 25	40.3	2.4	-	37.9	7	44.9

* Temporary allowance.

Sources: Texaco Return of Information; Exhibits T-1 and H-1;
Evidence, pp. 5-6, 8.

3. After the Price War

It appears that about July 22, 1959, the prevailing retail prices of gasoline in metropolitan Toronto became 39.9¢ and 44.9¢ per gallon for regular and premium grades respectively. Mr. Edmunds adopted these prices at that time and had not changed them up to the time of his oral examination on January 5, 1960. Wilky's also adopted the prevailing prices of 39.9¢ and 44.9¢ on July 22 but about November, 1959 the price of regular gasoline at Wilky's was reduced to 38.9¢ and some time in December, 1959 the price was reduced further to 37.9¢. Mr. Mills said that the reduction in November was made to meet the competition of some service stations in his

area selling at 38¢ and the reduction to 37.9¢ in December was to meet the competition of a station selling at 37¢ (Evidence, pp. 30-31). Some time between July 22, 1959 and January 5, 1960 Wilky's also reduced the price of premium gasoline to 43.9¢ per gallon.

Table 6 sets out information as to purchase prices and selling prices of the two stations from July 22, 1959 to January 5, 1960.

Table 6

Retail Prices of Gasoline between
July 22, 1959 and January 5, 1960

Dealer	Tank wagon price	TA*	Discount	Net purchase price	Gross margin	Selling price
- cents per gallon -						
Regular						
Mr. Edmunds	35.3	1.9	-	33.4	6.5	39.9
Wilky's						
July 22-November	35.3	1.9	2.5	30.9	9	39.9
November-Mid- December	35.3	1.9	2.5	30.9	8	38.9
Mid-December- January 5	35.3	1.9	2.5	30.9	7	37.9
Premium						
Mr. Edmunds	40.3	2.4	-	37.9	7	44.9
Wilky's						
July 22	40.3	2.4	2.5	35.4	9.5	44.9
January 5	40.3	2.4	2.5	35.4	8.5	43.9

* Temporary allowance.

Sources: Evidence, pp. 8-10, 29-31; Hearing, p. 32.

CHAPTER V

TRADE RELATIONSHIP OF MR. EDMUNDS'S SERVICE STATION AND WILKY'S

1. Proximity of Mr. Edmunds's Service Station to Wilky's

As previously mentioned, the service station operated by Mr. Edmunds on the corner of Glencairn Avenue and Bathurst Street in Toronto is about a mile and a quarter distant from Wilky's on the corner of Dufferin Street and Hillmount Road. The nearest competitor of Mr. Edmunds is an Imperial Oil dealer on the northwest corner of Glencairn and Bathurst.

Mr. Edmunds said in evidence that the bulk of his gasoline trade was drawn from an area within approximately a mile radius of his station, principally the district between Yonge and Dufferin Streets. Mr. Edmunds said that he would have very few customers from beyond Dufferin Street (Evidence, pp. 12-13).

Mr. Mills could not specify any particular area from which the bulk of Wilky's business came (Evidence, p. 26). Reference has already been made to evidence that a large part of Wilky's business consisted of charge accounts with commercial firms.

From the location of the two service stations and the evidence as to the customers patronizing Mr. Edmunds's service station and Wilky's it is reasonable to conclude, as counsel for Texaco stated, that some motorists would go to one station or the other and the trading areas of the two stations would thus overlap.

2. Volume of Business of Mr. Edmunds's Service Station and of Wilky's during Price War

Mr. Edmunds gave evidence that he lost some customers during the first part of the price war before he reduced his prices. He believed that he lost several customers to Croystan Motors, another Texaco dealer, and to Wilky's (Evidence, p. 14). The data contained in Texaco's Return of Information and the evidence as to selling prices at Wilky's and Edmunds's service station enable some comparison to be made of changes in the quantities of gasoline delivered to the two stations when selling prices at the two stations dif-

ferred. The figures are presented in Tables 7 and 8.

Table 7

Deliveries of Premium Gasoline to Wilky's and
Mr. Edmunds and Differences in Retail Prices
Charged by Both Outlets for Such Gasoline

Date	Deliveries to		(a)	Price differentials (¢ per gallon)*
	Wilky's (gallons)	Edmunds (gallons)	(b)	
	(a)	(b)		
April 17-June 30	27,710	18,550	1.5	+ 1
July 1-July 10	4,350	3,100	1.4	-10
July 11-July 20	1,000	1,480	0.7	- 3
July 21	500	500	1	- 1
July 22-July 25	2,300	690	3.3	0
Total	35,860	24,320		

* A minus sign (-) indicates that the price charged by Wilky's was lower than the price charged by Mr. Edmunds by the amount shown. A plus sign (+) indicates the reverse situation.

Sources: Texaco Return of Information; Evidence, pp. 5-6, 8.

Table 8

Deliveries of Regular Gasoline to Wilky's and
Mr. Edmunds and Differences in Retail Prices
Charged by Both Outlets for Such Gasoline

Date	Deliveries to		(a)	Price differentials (¢ per gallon)*
	Wilky's (gallons)	Edmunds (gallons)	(b)	
	(a)	(b)		
April 17	4,265	1,100	3.9	- 7
April 18-April 20	15,900	0	-	-11
April 21-May 4	123,760	3,615	34.2	-14
May 5-June 5	127,875	12,930	9.9	0
June 6-June 17	34,550	4,550	7.6	- 4
June 18-June 29	23,980	3,270	7.3	- 8
June 30-July 10	17,730	3,000	5.9	-11
July 11-July 20	11,660	1,500	7.8	- 3
July 21	2,200	1,000	2.2	- 1.5
July 22-July 25	8,355	1,310	6.4	0
Total	370,275	32,275		

* A minus sign (-) indicates that the price charged by Wilky's was lower.

Sources: Texaco Return of Information; Evidence, pp. 5-6, 8.

In Mr. Edmunds's evidence as to loss of customers during the price war there is no differentiation between customers lost to Croystan Motors and to Wilky's, and no mention of the specific time during the price war when the trade was lost. Mr. Edmunds's evidence was as follows:

"Q. Where did you lose them to, do you know?

A. Croyston [sic] Motors and to Wilkies [sic], to the best of my knowledge. And on passing by I have seen their cars in there. These are the ones that I would consider directly due to the price war, or to prices -- because it is only natural that I have lost customers, just the same as anybody else, because something has gone wrong, and they have felt that they have not been looked after properly, or because of some adjustment of some nature, or something like that.

But I feel that, due to prices themselves, I have lost several that I know of, and I have lost several that I did not know so well."

(Evidence, p. 14)

Mr. Mills, in his evidence, said that he did not know whether in relation to other Texaco dealers he had gained or lost any customers. He considered that he had not gained any business during the price war (Evidence, p. 28).

With respect to customers Mr. Edmunds considered he had lost there is no evidence as to whether they had been purchasers of regular or premium gasoline. It will be recalled that up to the end of June the price of premium gasoline at Wilky's was 1¢ per gallon higher than at Edmunds's service station. Also, the price of premium gasoline was not reduced by the latter until July 11 (because of the delay in changing the price on the pumps), although Mr. Edmunds was receiving a temporary allowance on premium gasoline from July 3.

If it is assumed that gasoline is sold by the dealer in the period between deliveries it does not appear from Tables 7 and 8 that changes in the quantity of gasoline sold by Wilky's and Edmunds's service stations can be related directly to the level of prices as between the two stations. The absence of direct relationship is not unexpected because of the evidence as to the competition of dealers of other oil companies in the same area and also because of the existence of other Texaco dealers in the same part of metropolitan Toronto.

In the case of premium gasoline Wilky's sold more of this grade relative to Edmunds's service station in the period July 22 to July 25, when prices at both stations were the same than it did from July 1 to July 10 when the price at Wilky's was 10¢ per gallon lower than at Edmunds's service station. This may reflect less price consciousness on the part of buyers of premium gasoline than of purchasers of regular gasoline.

The figures with respect to deliveries of regular gasoline fail to reveal any direct relationship between quantities of gasoline delivered and the relative level of prices at the two stations. From May 5 to June 5 when there was no difference in price between the two outlets, deliveries to Wilky's were ten times as large as those to Mr. Edmunds. In the period June 30 to July 10 when the price of regular gasoline at Wilky's was 11¢ per gallon lower than at Edmunds's service station the deliveries of regular gasoline to the former were about six times larger than to the latter. The only exception seems to be the period from April 17 to May 4 in which the difference in prices was at a maximum of 14¢ per gallon. During that time, not only were deliveries to Wilky's about 34 times as large as those to Mr. Edmunds but the latter's sales of regular gasoline appear to have averaged less per day during this period than for the whole period April 17 to July 25. The same relative decline appears to have occurred in the case of premium gasoline, although Mr. Edmunds had a lower price for premium gasoline in April and May than had Wilky's.

While it is possible that Mr. Edmunds lost some customers to Wilky's during the period April 17 to May 4, there is no way of knowing to what extent the decline in business at Edmunds's service station was due to the competition of service stations other than Wilky's. This is of particular significance when it is recalled that the nearest competitor of Mr. Edmunds was an Imperial Oil dealer across the street with lower prices than those of Mr. Edmunds.

Mr. Enman gave the following evidence in regard to the prices at the neighboring Imperial Oil dealer in April, 1959:

"A. At the time he was lower than Mr. Edmunds. I can say that. I just don't recall what the exact figures on the pumps were but he was below Mr. Edmunds on the pump prices.

THE CHAIRMAN:

Q. Do you mean he was lower in the pump price and then allowed an additional ten per cent?

A. Yes, besides."

(Hearing, p. 9)

3. Availability of Temporary Allowance to
 Mr. Edmunds

The evidence makes clear that Mr. Edmunds had been granted a temporary allowance by Texaco in 1958 when somewhat similar conditions existed in the retail gasoline trade in metropolitan Toronto. It may be taken, therefore, that Mr. Edmunds was familiar with the basis on which the temporary allowance was available. The fact that the temporary allowance was available in April, 1959 was also made known to Mr. Edmunds by Mr. Enman as the representative of Texaco. Mr. Enman gave the following evidence as to conversations he had with Mr. Edmunds in April, 1959:

"BY MR. ROBINETTE:

. . .

Q. And you said that you had some conversations with him. Just repeat that again?

A. Yes, I spoke to him several times. I wanted to see him competitive. I would like to see it for his own benefit and I suggested several times that he reduce his price in order to meet the competition. I said that we would help if he needed and required assistance.

Q. What did he say to that?

A. He was not interested. He said that he had been in the price situation a year prior to this, his equipment was very old, it was not operating as satisfactorily as it should have been and his pumps would not pump as fast as perhaps the ordinary pumps would and he found that when he lowered his price --

Q. Was he speaking of the previous year?

A. Yes, 1958.

Q. When he lowered his price in 1958 - yes?

A. . . . his business increased but he did not think it was fair to regular customers because a number of them would drive in, the pumps would be held up and he felt they were not getting the service they were entitled to."

(Hearing, p. 10)

Mr. Edmunds's evidence in regard to the conversations was as follows:

"BY MR. QUINLAN:

Q. Before you got this assistance from the company, which appears first on the invoice of July 3, had you approached the company for assistance before, or not?

A. Only verbally, with my representative -- and not asking for assistance, actually, but rather asking, 'Is there anybody doing anything about this price war?' -- more or less, and 'How come that they can sell cheaper than I can buy?' His words to me were, 'Well, if you want to get in on it, you just let me know.' But he would not commit himself as to what prices I could get on doing it.

Of course I felt that, well, to my knowledge, I was at a disadvantage in the fact that the fellows around me were changing from day to day, and I knew that it was an impossibility for me to get the serviceman up every day. Sometimes they keep you waiting for a week.

Q. That is, to change the pumps?

A. Yes. So I just could not do anything about it, anyway, had I wanted to. But I felt that the average person does not like to see prices just going up and down and up and down and up and down all over the place, and then it makes it much harder to do book work."

(Evidence, p. 10)

It appears to be the case that Mr. Edmunds for reasons of his own did not avail himself of the temporary allowance in April, 1959 but did so in July of the same year.

CHAPTER VI

CONCLUSIONS

The allegations made by the Director in the Statement of Evidence relate only to the differences in prices on sales of gasoline by Texaco to Wilky's and Mr. Edmunds arising out of the granting of temporary allowances to the former during periods in April and May, 1959 and June and July, 1959 when such allowances were not being granted to Mr. Edmunds.

It is the conclusion of the Commission that the temporary allowances in question were available to Mr. Edmunds on the same basis as to Wilky's. Although Mr. Edmunds did not receive temporary allowances until July 3, 1959 this was not due to an unwillingness on the part of Texaco to grant such allowances from the date when Wilky's first received them, but to a decision on the part of Mr. Edmunds not to modify his pricing policy so that he would receive them. It is the opinion of the Commission that the fact that temporary allowances were not granted by Texaco to Mr. Edmunds in the periods mentioned in the Statement of Evidence did not form part of a practice of discriminating in price on the part of Texaco.

(Sgd.) C. R. Smith
Chairman

(Sgd.) A. W. Whiteley
Member

(Sgd.) Pierre Carignan
Member

Ottawa,
April 28, 1961.

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